

From: "Carter Reed/R4/USDAFS" <creed01@fs.fed.us>
To: <nrogm.pgrubaug@state.ut.us>, <nrogm.pgrubaug@state.ut.us>
Date: 5/4/01 8:48AM
Subject: Asphalt Disposal at DesBeeDove Mine

*Copy Mary Ann,
Daron,
Susan,
Frank*

Please reference our letter to Energy West Mining Company, dated March 16, 2001. A copy of the letter was sent to Mary Ann Wright. Our position is that the asphalt pavement materials must be removed and disposed of at a suitable landfill or recycled and reused. The letter from DEQ resolves the RCRA requirement for removal of solid waste, but the Forest Service policy regarding removal of solid waste remains.

The area of proposed disposal is on unleased NFS lands. It was included into the mine permit area only after a FS special-use permit authorized occupancy of the land for the proposed uses and facilities which do not include disposal of materials. Incorporation of this area into the mine permit area in no way supersedes or foregoes requirements of the special-use permit or Forest Service authority to administer the special-use permit. Use and occupancy of the land under the special-use permit is subject to current Forest Service rules. Even though the Forest Service consented to the mine plan that included burial of asphalt, no amendment to the special-use permit was made or requested. Condition A of the current special-use permit signed by PacifiCorp on March 2, 2001 states that the permittee is subject to applicable Federal, State, and local laws, regulations, and standards. The permit, previous to the renewal, issued in 1977 had a similar clause, item 7, calling for compliance with all applicable Federal, State, county, and municipal laws, ordinances, or regulations. Both permits included clauses requiring removal of structures and improvements with cost to be borne by the permittee. Where laws and regulations/policies change over time, the permit language requires current standards to be met at the time of work.

Forest Service policy/standards are included in the Forest Service Manual (FSM). FSM 2130.3, Item 3 states "The Forest Service discourages solid waste disposal on national Forest system lands, unless such use is the highest and best use of the land". The USDA Environmental Initiative (Item 21) states: "The FS will make every effort to insure that its lands and minerals management activities for new and currently active mines and timber related activities will not result in new or exacerbate current CERCLA sites, and that no new municipal solid waste landfills or open dumps will be permitted on National Forest System Lands. Policy and guidance will be developed for the use of NFS lands for permitted solid waste transfer and collection systems".

Current Forest Service regulations regarding FS special-uses prohibit

issuance of new permits that would involve disposal of solid waste or disposal of radioactive or other hazardous substances. Asphalt pavement materials are clearly a solid waste. Clause D. Amendment. of the current special-use permit allows amendment in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

Carter Reed
Forest Geologist
Manti-La Sal National Forest
Supervisor's Office
599 West Price River Dr.
Price, UT 84501
435-637-2817
creed01@fs.fed.us

CC: "Elaine J Zieroth/R4/USDAFS" <ezieroth@fs.fed.us>, "Aaron Howe/R4/USDAFS" <ahowe@fs.fed.us>, "Dale Harber/R4/USDAFS" <dharber@fs.fed.us>